



Chickasaw Enterprises

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February 5, 2007

Office of Indian Energy and
Economic Development
Attention: Section 1813 ROW Study
Room 20 – South Interior Building
1951 Constitution Avenue, NW
Washington, D.C. 20245

To Whom It May Concern:

The following comments regarding the December 21, 2006, revised version of the United States Department of Energy and Department of the Interior *Draft Report to Congress: Energy Policy Act of 2005, Section 1813 Indian Land Rights-of-Way Study* are respectfully submitted on behalf of the Chickasaw Nation.

Of the two key recommendations made by the departments of Energy and the Interior, the first recommendation that energy ROWs should continue to be negotiated by tribes and energy companies and the final terms should be a product of this bi-lateral negotiation process is consistent with the maintenance of tribal sovereignty and reflects sound and "normal" business practice.

The second recommendation, that in the event of a "failure of negotiations" and where this "failure" has a significant regional or national effect on the supply, price or reliability of energy resources.....Congress should remedy this impasse by passing case specific legislation", such an act would be a direct threat to tribal sovereignty over their land and resources by making the final ROW terms an act of Congress. Moreover, implementation of this recommendation through statute would seriously undercut the negotiating position of Indian tribes and could increase the likelihood of "failure of negotiations" by providing the energy companies alternatives to negotiating in good faith with tribes. In short, every energy company will be predisposed to ask the following question *before* entering into negotiations with a tribe: "Are we more likely to get what we want from the Indians or from Congress?" Given the relative history of relationships between energy companies and congressmen as compared to the history of energy companies and Indian tribes, it follows that most energy company executives would likely prefer to place their interests on Capitol Hill rather than in the hands of tribal leaders.

While the majority of the report supports the first recommendation, the report itself provides absolutely no justification for the second recommendation.

The report attempts to objectively highlight the involvement and positions of both tribes and energy companies on various ROW issues in an apparent effort to place the current ROW debate in a historic and legalistic framework and report on statements from both sides. However, it is troubling that this historical narrative does not provide one single example of abuse of an Indian tribe by the energy companies with regard to ROWs in the last 150 years. In fact, the closest the report gets to even implying that Indian tribes were historically treated improperly is a parenthetical phrase indicating that land appraisals were conducted by appraisers hired by the energy companies as late as the 1960s. The word "abuse" is never used. On the other hand, the core concern of energy companies today, "uncertainty", is used 27 times in the document. This uncertainty stems from the energy companies' inability to dictate or control the outcome as in the past hundred years. The red herring of fair market value as determined by the value of adjacent property in the middle of nowhere no longer offers the companies a vehicle for obtaining low fees.

The report gives the distinct impression that Indian tribes only began to negotiate in an assertive manner in the last 15 to 20 years. This means that renegotiations of ROWs for existing assets are subject to a negotiating environment far different than that which was in place during the original round of "negotiations". This change in negotiating climate is not to the benefit of the energy companies. Yet, the fact remains that this risk is encountered by energy companies in many markets in which ROWs are negotiated both in the United States and in foreign countries. The only distinction the energy companies can make regarding their dealings with Indian tribes is that these sovereign entities exist within the borders of the United States.

The second recommendation specifically calls for the Congress to legislate a case specific remedy when negotiation failure has a "significant regional or national effect on the supply, price or reliability of energy resources". Yet a "principal observation" of the report is that "negotiations between Indian tribes and energy companies for the grant, expansion or renewal of energy rights-of-way across tribal lands *have had no demonstrable effect on energy costs for consumers, energy reliability or energy supplies to date*".

Having admitted the absence of any historical evidence to indicate that Indian ROW negotiations or terms have negatively impacted price, availability or reliability the report goes on to make another "observation": "future unresolved conflicts over right-of-way across tribal land *could* have a significant regional or national effect on the availability, reliability or consumer costs of energy resources". In short, ROW issues with tribal governments have never had an impact on the price, availability or reliability of energy to consumers. Only because it could *theoretically* happen, is it suggested that Congress should position itself to protect the interests of the general American populace at the cost of tribal sovereignty. Thus, while the energy companies cannot prove that Indian tribes ROW negotiating tactics or demands have ever caused any material impact downstream, Indians are being asked to prove that their positions never will in the future, which is a logical absurdity.

In addition to having no historical basis, undercutting the Indian ROW negotiating position and threatening tribal sovereignty, the report's second recommendation also flies in the face of the benefit and nature of the ROW fees for Indian tribes. It is indeed disturbing

that the Department of the Interior that is charged with protecting the interests of tribes is prepared to threaten a critical source of revenue for the tribes. The report rightly points out that many tribes cannot rely on taxation to cover the costs associated with providing for the good of their citizens. Incremental revenue from ROW fees may be critical to the financial health of some tribes. The report goes so far as to point out that "ROW fees therefore are akin to tax rates assessed on real estate by local government to fund budgets to provide local services".

In short, this report offers a recommendation that has no historical foundation and offers no new thinking on the subject of resolving ROW issues in relying on the U.S. Congress that, with all due respect to its current members, has not been a consistent champion of Indian interests over the last 230 years. Reliance on the U.S. Congress to legislate a case-specific remedy to a so-called "failed" ROW negotiation keeps the energy companies firmly in control of the process at the cost of tribal sovereignty and financial wellbeing by offering energy companies an alternative path for achieving their corporate interests.

We appreciate the opportunity to review and comment on the draft report. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Brian Campbell".

Brian Campbell, CEO
Chickasaw Nation Enterprises